

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of:)
)
NEW TIMES SECURITIES)
SERVICES, INC.)
)
Debtor)
)

Stan Bernstein

1) Application filed by proposed class claimants to
authorize and approve the filing of a class proof of claim
and for a certification of the putative class and to
shorten time for the hearing

Memorandum by proposed class claimants

Memorandum by Plaintiff Securities Investor Protection
Corporation

Memorandum of law by Trustee James W. Giddens

Affidavit of Derek J. T. Adler in opposition

United States Bankruptcy
Court
Westbury, New York

July 28, 2000
10:00 a.m.

B E F O R E:

HONORABLE STAN BERNSTEIN
United States Bankruptcy Judge

A P P E A R A N C E S:

HUGHES HUBBARD & REED LLP
Attorney for James W. Giddens, Trustee
One Battery Park Plaza
New York, New York 10004
BY: JAMES W. KOBAK, JR., ESQ.
DANIEL S. LUBELL, ESQ.

1 THE COURT: Okay, so, you're telling me that
2 this is very different from the open transaction.

3 MR. HARBECK: Correct.

4 THE COURT: Okay, so, now we're dealing with a
5 closed transaction, where the money is there, you have
6 interest in a --

7 MR. HARBECK: The securities are there.

8 THE COURT: -- real --

9 MR. HARBECK: Not the money is there. The
10 securities are supposed to be there.

11 THE COURT: No, no -- yeah, you have -- you
12 have an ownership interest in the securities; namely,
13 shares of the mutual fund, of a mutual fund that is real,
14 existing as of the petition date.

15 MR. HARBECK: Dreyfus, Janus, you name it.

16 THE COURT: Okay.

17 MR. HARBECK: Now, what Congress did is it said
18 it wants to give the Trustee and SIPC a very good idea of
19 what securities have to -- that the Trustee is going to
20 have to go out into the marketplace and buy. So, if you
21 file within sixty days, you'll get the securities, without
22 question. Whether -- if they triple in value, you'll get
23 the securities.

24 But, if --

25 THE COURT: Even -- even if --

1 MR. HARBECK: Even if they're not there.
2

3 THE COURT: Even if they're not there.
4

5 MR. HARBECK: Correct.
6

7 THE COURT: In other words, if the money was
8 diverted, converted --
9

10 MR. HARBECK: And the securities were never
11 purchased.
12

13 THE COURT: Okay.
14

15 MR. HARBECK: And, if those positions triple,
16 we will gladly give the people their securities positions.
17

18 THE COURT: But, you've got to jump.
19

20 MR. HARBECK: But, you've got to act fast,
21 yeah. And, Congress did that --
22

23 THE COURT: Because -- because --
24

25 MR. HARBECK: -- because of the fluctuations.
26

27 THE COURT: -- because there's a concern --
28 because there's a concern that the value of this mutual
29 fund might skyrocket and it's going to cost SIPC a lot
30 more money.
31

32 MR. HARBECK: Six months down the line, that's
33 right.
34

35 THE COURT: Okay, all right. And, you don't
36 want people playing games with you.
37

38 MR. HARBECK: That's correct.
39

40 THE COURT: Deciding when they're going to --
41